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July 14, 2005

VIA HAND DELIVERY

The Honorable Charles L.A. Terreni  
Administrator and Chief Clerk  
Public Service Commission of South Carolina  
101 Executive Center Drive, Suite 100  
Columbia, South Carolina, 29210

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RE: *Application of Duke Energy Corporation for Authorization to Enter into a  
Business Combination Transaction with Cinergy Corp.*  
Docket No. 2005-211-E

Dear Mr. Terreni:

Enclosed for filing are an original and twenty copies of Application of Duke Energy Corporation for Authorization to enter into a Business Combination Transaction with Cinergy Corp. Also enclosed is an additional copy of the Application. Please date stamp it and return to the courier in the enclosed self-addressed envelope.

Duke Energy respectfully requests that the Commission consider and approve this Application on an expedited basis so that the acquisition described in the Application may be consummated in a timely manner.

Thank you for your assistance in this matter.

Sincerely,

Paul R. Newton

Enclosure

cc: C. Dukes Scott, Esq., Office of Regulatory Staff  
Florence P. Belser, Esq., Office of Regulatory Staff

**BEFORE**

**THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA**

**Docket No. 2005-\_\_\_\_\_**

Application Of Duke Energy Corporation       )  
For Authorization To Enter Into A Business       )  
Combination Transaction With Cinergy Corp.       )

APPLICATION

Duke Energy Corporation ("Duke Energy"), pursuant to Section 58-27-1300 of the South Carolina Code Annotated (1976 as amended) ("S.C. Code Ann."), and other applicable regulations of the Public Service Commission of South Carolina (the "Commission"), hereby makes Application for authorization to enter into a business combination with Cinergy Corp. ("Cinergy").

In support of this Application, Duke Energy respectfully shows unto the Commission:

**1. Name and Address of Duke Energy**

The name and post office address of Duke Energy are: Duke Energy Corporation, Post Office Box 1244, Charlotte, North Carolina 28201-1244.

**2. Notices and Communications**

The names and addresses of Duke Energy's attorneys who are authorized to receive notices and communications with respect to this Application are:

Paul R. Newton  
Vice President & General Counsel, Duke Power, a division of  
Duke Energy Corporation  
Kodwo Ghartey-Tagoe  
Chief Regulatory Counsel, Duke Power, a division of  
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### **3. Description of Duke Energy.**

Duke Energy is a corporation duly organized and existing under the laws of the State of North Carolina. Through its Duke Power division, it generates, transmits, distributes and sells electricity to approximately 2.2 million residential, commercial and industrial customers in a service area that covers about 22,000 square miles in central and western North Carolina and western South Carolina. Additionally, Duke Power owns and operates approximately 94,000 miles of distribution lines and a 13,000-mile transmission system. It also sells electricity at wholesale to many municipal, cooperative and investor-owned electric utilities. Duke Energy is authorized to transact business in the State of South Carolina and is a public utility under the laws of this State.

Accordingly, its operations in South Carolina are subject to the jurisdiction of the Public Service Commission of South Carolina. Duke Energy also is a public utility under the laws of North Carolina and is subject to the jurisdiction of the North Carolina Utilities Commission with respect to its operations in that State. The company also is a public utility under the Federal Power Act, and certain of its operations are subject to the jurisdiction of the Federal Energy Regulatory Commission ("FERC").

In addition to its regulated operations in South Carolina and North Carolina, Duke Energy, through subsidiaries, engages in a broad range of energy and energy-related business activities in the Americas and also owns a real estate subsidiary. Duke Energy

had approximately \$55.5 billion in assets, \$22.5 billion in revenues and net income of \$1.5 billion as of December 31, 2004, and ranked number 86 on Fortune magazine's 2005 ranking of the 500 largest publicly traded U.S. companies.

#### **4. Description of Cinergy**

Cinergy is a Delaware corporation headquartered in Cincinnati, Ohio. Its principal direct and indirect subsidiaries are (i) PSI Energy, Inc. ("PSI"), a vertically integrated electric utility serving a significant portion of the retail electric requirements in the State of Indiana, (ii) The Cincinnati Gas & Electric Company ("CG&E"), a utility engaged in the production, transmission, distribution, and sale of electricity and the sale and transportation of natural gas in the southwestern portion of Ohio<sup>1</sup>, and (iii) The Union Light, Heat and Power Company ("ULH&P"), a wholly-owned subsidiary of CG&E and a vertically integrated utility serving a portion of the retail electric and gas requirements in Northern Kentucky. Collectively, PSI, CG&E and ULH&P serve approximately 1.5 million retail electric customers and 500,000 retail gas customers. In addition to regulated utility operations, Cinergy's subsidiaries are involved in wholesale power generation and sales, energy marketing and trading, and other energy-related businesses.

Cinergy is a registered holding company under the Public Utility Holding Company Act of 1935 ("PUHCA"). It had approximately \$15 billion in assets, \$4.7 billion in revenues and net income of \$400 million as of December 31, 2004, and ranked

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<sup>1</sup> Beginning January 1, 2001, all retail customers in Ohio were allowed to choose their electric generation supplier. Currently, CG&E is in a market development period for residential customers and a competitive retail electric market for non-residential customers, as it transitions to deregulation of electric generation and a competitive retail electric service market in the state of Ohio. Ohio's customer choice legislation provided for a market development (frozen rate) period that began January 1, 2001, and ended December 31, 2004, for non-residential customers and is scheduled to end December 31, 2005, for residential customers. At the end of these market development periods, pursuant to authorization received from the Ohio Commission, CG&E will implement market rates under a rate stabilization plan that covers the period after the market development period through year-end 2008.

number 412 on Fortune magazine's 2005 ranking of the 500 largest publicly traded U.S. companies.

## **5. Description of the Proposed Transaction.**

Duke Energy and Cinergy have entered into Agreement and Plan of Merger by and among Duke Energy, Cinergy, Duke Energy Holding Corp., a Delaware corporation ("Holdings"), Deer Acquisition Corp., a North Carolina corporation ("Deer Acquisition") and Cougar Acquisition Corp., a Delaware corporation ("Cougar Acquisition"), dated as of May 8, 2005 ("Plan of Merger") (attached as Exhibit A).<sup>2</sup> The Plan of Merger sets forth a series of mergers and restructuring transactions as described below that will implement the business combination of Duke Energy and Cinergy. These transactions are also schematically depicted in Exhibit B.

A. Before the effective time of the Plan of Merger, Duke Energy will redeem all the outstanding shares of its preferred stock (the "Preferred Stock Redemption"). Under the Preferred Stock Redemption, each holder of Preferred Stock, par value \$100 per share, and Preferred Stock A, par value \$25 per share, will receive the redemption price to which it is entitled under the applicable preferred stock series, together with all dividends accrued and unpaid to the date of such redemption. The Preferred Stock Redemption will facilitate the limited liability company conversion discussed in paragraph 5.C. below.

B. At the effective time of the Plan of Merger, Deer Acquisition will be merged with and into Duke Energy (the "Deer Acquisition Merger") in accordance with

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<sup>2</sup> Holdings, a signatory to the Plan of Merger, has previously been created as a shell subsidiary of Duke Energy solely for purposes of achieving the Plan of Merger. It was formerly known as Deer Holding Corp. Deer Acquisition, a signatory to the Plan of Merger, has previously been created as a shell subsidiary of Duke Energy solely for purposes of achieving the Plan of Merger. Cougar Acquisition, one of the signatories to the Plan of Merger, has previously been created as a shell corporation solely for purposes of achieving the Plan of Merger.

the North Carolina Business Corporation Act (the “NCBCA”). As part of the transaction, the common stock shareholders of Duke Energy will receive shares of Holdings common stock on a one-for-one basis. Duke Energy will be the surviving corporation and will continue its corporate existence under the laws of the State of North Carolina. As a result of the Deer Acquisition Merger, Duke Energy will become a wholly-owned subsidiary of Holdings.

C. After the Deer Acquisition Merger becomes effective, Duke Energy will convert to a limited liability company to be called Duke Power Company LLC (the “Duke Energy Conversion”) pursuant to a plan of conversion adopted under Section 55-11A-11 of the NCBCA and Section 57C-9A-02 of the North Carolina Limited Liability Company Act. Conversion of Duke Energy to a limited liability company is an efficient means of addressing the potential tax impact of the distribution to Holdings of Duke Energy’s limited liability company interests in Duke Capital LLC (“Duke Capital”) described in paragraph 5.D below. Following the Duke Energy Conversion, Duke Power Company LLC (“Duke Power”) will remain a wholly owned subsidiary of Holdings, as Holdings will own all of the limited liability company interests in Duke Power. Duke Power will remain a public utility subject to this Commission’s jurisdiction.

D. Immediately following the effectiveness of the Duke Energy Conversion, Duke Power will distribute to Holdings all of the limited liability company interests in Duke Capital, causing Duke Capital to be a direct wholly owned subsidiary of Holdings. Duke Capital will continue to own all of its direct and indirect subsidiaries, comprising all of the unregulated businesses of Duke Energy prior to completion of the merger.

E. After the Duke Capital distribution, Cougar Acquisition will be merged with and into Cinergy in accordance with the Delaware General Corporation Law (the

"DGCL") (the "Cougar Acquisition Merger"). In connection with the mergers, each Cinergy shareholder will receive 1.56 shares of Holdings common stock for each share of Cinergy common stock he or she owns. Cinergy will be the surviving corporation in the Cougar Acquisition Merger and is currently expected to continue its corporate existence under the laws of the State of Delaware. As a result of the Cougar Acquisition Merger, Cinergy will become a wholly owned subsidiary of Holdings.

F. Pursuant to the Plan of Merger and following consummation of the above transactions, Holdings will change its name to "Duke Energy Corporation" (hereafter "New Duke Energy") and will become a registered holding company under PUHCA. Based on the number of shares outstanding as of May 8, 2005, current Duke Energy shareholders will own approximately 76 percent of New Duke Energy's common stock and current Cinergy shareholders will own approximately 24 percent of New Duke Energy's common stock. New Duke Energy and Duke Power will maintain their headquarters in Charlotte, North Carolina.

G. As a result of the merger, New Duke Energy will establish a service company to provide goods and services to its utility and non-utility subsidiaries, including Duke Power.<sup>3</sup> The goods and services to be provided include the following: finance, treasury, tax, accounting, legal, human resources, information systems, investor relations, public relations, maintenance planning and engineering, fuel procurement, fuel and strategic planning. The centralized provision of goods and services through the service company will enable the utility and non-utility subsidiaries of New Duke Energy to achieve enhanced cost efficiencies and economies of scale.

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<sup>3</sup> While PUHCA does not require the establishment of a service company, as a matter of policy and practice, the Securities and Exchange Commission has required the establishment of a service company where the holding company will have multiple public utility subsidiaries like Holdings.

## 6. Standard for Approval

Section 58-27-1300 of S.C. Code Ann. requires Commission approval prior to the consolidation or merger of a utility's property, powers, franchises, or privileges. While the statute does not explicitly specify the standard under which the Commission may review and approve such transactions, the Commission has sought to ensure that South Carolina retail customers are protected from any adverse effects of a proposed consolidation or merger. In so doing, the Commission has considered factors such as whether the proposed transaction will have any adverse effect on the utility's retail rates and charges, whether the utility's retail cost of service and jurisdictional revenues or expenses are adversely affected by the transaction, and whether the merger will result in any benefits to South Carolina retail customers. *See, e.g., Application of Duke Energy Corporation for Approval Pursuant to South Carolina Code Sections 58-27-1300, 58-27-1710, 58-27-1720 and 58-27-1730 to Issue Securities in Connection with a Business Combination Transaction with Westcoast Energy, Inc.*, Docket No. 2001-441-E (Order No. 2002-20 entered January 29, 2002); *Application Of Carolina Power & Light Company And Interpath Communications, Inc. To Transfer Ownership Of CP&L And Interpath To A Holding Company*, Docket No. 1999-434-E/C (Order No. 2000-0229 entered March 6, 2000) ; *Application of Duke Power Company for Approval to Issue Securities in Connection with a Business Combination Transaction with PanEnergy Corporation*, Docket No. 96-383-E (Order No. 97-310 entered April 21, 1997); *Application Of South Carolina Electric And Gas Company To Transfer And Redesignate Certain Certificates Of Public Convenience And Necessity In Accordance With A Corporate Reorganization*, Docket No. 84-389-E/G (Order No. 84-981 entered November 27, 1984).



## **7. Purpose of the Plan of Merger and Reasons for Approval**

Duke Energy entered into the Plan of Merger to build a stronger company. The merger will create a larger, diversified, financially stronger company that will affirmatively benefit the public. The combined company will have a market capitalization of approximately \$36 billion<sup>4</sup>, assets totaling more than \$70 billion<sup>5</sup>, estimated annual revenues of approximately \$27 billion<sup>6</sup>, and net income of approximately \$1.9 billion<sup>7</sup>. Further information on the current size and scope of the two companies may be found in the 2004 annual reports to shareholders of Duke Energy and Cinergy, attached hereto as Exhibit C.

Based upon these estimates, New Duke Energy will have one of the top five electric businesses in the United States on a stand-alone basis, and combined with its gas operations, will be one of the largest diversified utility and gas operations companies in North America. It will enjoy the benefits of a diverse portfolio including those arising from differences in the economic and climatic conditions of the service areas in which its utility businesses operate. Additionally, the ability to share best practices between two superior operators should lead to enhanced operations for Duke Power and the Cinergy utilities.

Duke Power will benefit from New Duke Energy's financial strength and access to financial markets. Duke Power itself will retain the ability and financial strength to obtain financing on its own, subject to any necessary regulatory approval. Duke Power will not issue any security, incur any debt, or pledge any assets to finance any part of the acquisition of Cinergy's shares.

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<sup>4</sup> As of stock close May 6, 2005.

<sup>5</sup> As of December 31, 2004.

<sup>6</sup> As of December 31, 2004.

<sup>7</sup> As of December 31, 2004.

The combination of Duke Energy and Cinergy, and the synergies that are expected to result, will create a new, diversified, financially strong company with increased financial flexibility, efficiencies, productivity and revenue, and lower costs. All of the above factors will enhance the ability of Duke Power to continue its provision of reliable service at reasonable rates for South Carolina customers.

These synergies include reduced costs resulting from (1) the elimination of duplicative spending and overlapping functions, (2) the standardization and aggregation of external purchases of commodities and services, and (3) the consolidation of certain operations. Although the synergies will result in more productive and efficient operations with tangible savings, the economic savings and benefits are not immediate, but necessarily accrue over time and will be offset by costs to achieve. Accordingly, the benefits, after consideration of relevant costs necessary to close the transaction and to realize the identified savings and benefits, should be recognized over time as well.

Duke Energy's role as a strong corporate citizen, taxpayer and employer in South Carolina will continue following consummation of the Plan of Merger. Both Duke Energy and Cinergy share a common dedication and commitment to the communities they serve, to the environment, and to corporate citizenship. After the merger, this dedication and commitment will not change. Like Duke Energy, Cinergy shares a rich history of corporate giving and citizenship. The spirit of giving and community activism will only become stronger by the combination of these two community-focused companies, backed by the resulting financial strength of the combined company.

At the same time as the business combination with Cinergy is expected to create the benefits described above, the combination will not change or adversely affect Duke Energy's South Carolina retail electric operations or service to its customers. Duke

Power will continue to own and operate all of its electric distribution and transmission facilities and all of its existing generating facilities. It will also continue to provide electric service to all customers within its assigned territories. There will be no sale, assignment, pledge, transfer or lease of Duke Energy's public utility franchise, and the conversion of Duke Energy to a limited liability company will have no effect on the Commission's jurisdiction.

The Plan of Merger will not adversely affect retail electric rates for Duke Energy's South Carolina customers. In both Docket No. 2001-441-E (Westcoast merger) and Docket No. 96-383-E (PanEnergy merger) the Commission relied in part on the lack of adverse effect on Duke Power's retail rates in approving other business combinations involving Duke Energy. In addition, the Commission's ability to regulate and set appropriate rules for contracts and other relationships between Duke Energy and its regulated and unregulated affiliates will not be affected by the merger.

Establishment of a registered holding company structure is necessary to achieve the merger. It also will provide New Duke Energy with greater flexibility in carrying out its business than Duke Energy has today because the holding company structure makes business combinations and business expansion easier while preserving the separate identity, transparency and financial integrity of the traditional regulated utility operations.

Additionally, establishment of New Duke Energy as a registered holding company under PUHCA will not diminish the Commission's authority and jurisdiction under the laws of South Carolina. Indeed, the Commission already regulates certain utilities that are subsidiaries of registered holding companies. While PUHCA regulates the permissible lines of business, acquisitions, financings, affiliate contracts, and other activities of registered holding companies and their affiliates, the Securities and

Exchange Commission (which administers PUHCA) generally defers to assertions of jurisdiction by state commissions with respect to their jurisdictional utility companies, either formally pursuant to the express provisions of PUHCA or informally.

In summary, the continuing jurisdiction of the Commission to protect South Carolina customers, and the lack of adverse effect on Duke Energy's retail base rates will serve to ensure that the business combination of Duke Energy and Cinergy will have no known adverse impact on the rates and service of South Carolina customers. Further, (i) the creation of a financially diverse and stronger company, (ii) the complementary and diverse service areas of Duke Energy and the Cinergy utilities, (iii) the achievement of lower costs in the long term through economies of scale and use of a service company, and (iv) the continued presence of Duke Energy as a strong corporate citizen, taxpayer and employer in the Carolinas, will all ensure that retail customers receive benefit from the merger.

## **8. Approvals from Other Agencies**

In addition to this Commission's approval, the conditions associated with the consummation of the Plan of Merger include approvals by the shareholders of Duke Energy and Cinergy, and the approvals or concurrence of the following federal and state regulatory agencies: the Federal Energy Regulatory Commission, the Securities and Exchange Commission, the Nuclear Regulatory Commission, the United States Department of Justice, the Federal Trade Commission, the Federal Communications Commission, the North Carolina Utilities Commission, the Public Utilities Commission of Ohio, and the Kentucky Public Service Commission. Additionally, the Indiana Utility Regulatory Commission's acceptance for filing or approval of the various merger related affiliate agreements is required.

## **9. Notice of Holding Company Status**

Pursuant to Condition 2(h) of the Commission's Opinion and Order entered on January 29, 2002, in *Application of Duke Energy Corporation for Approval Pursuant to South Carolina Code Sections 58-27-1300, 58-27-1710, 58-27-1720 and 58-27-1730 to Issue Securities in Connection with a Business Combination Transaction with Westcoast Energy, Inc.*, Docket No. 2001-441-E, Duke Energy hereby provides notice that following consummation of the Plan of Merger, it will become a subsidiary of a registered holding company under PUHCA.

## **10. Exhibits**

Exhibits in support of this Application and incorporated herein by reference include:

- EXHIBIT A      Agreement and Plan of Merger dated May 8, 2005
- EXHIBIT B      Schematic diagram of transactions under the Plan of Merger
- EXHIBIT C      Annual Reports of Duke Energy and Cinergy

## **11. Filing with South Carolina Office of Regulatory Staff ("ORS").**

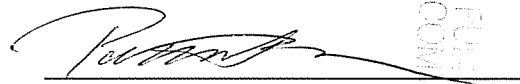
In compliance with Act 175, a copy of this Application and exhibits will be served on the Executive Director of the ORS on the date they are filed with the Commission.

WHEREFORE, Duke Energy respectfully requests that the Commission consider and approve this Application expeditiously so that the transaction described in this Application may be consummated as soon as possible after other regulatory and shareholder approvals. Specifically, Duke Energy respectfully requests that this Commission expeditiously (i) inquire into the relief sought in this Application, (ii) review the Application and exhibits provided by Duke Energy, (iii) conclude that the relief

requested in the Application should be granted as filed, (iv) find that the Plan of Merger and the business combination of Duke Energy and Cinergy are justified by the public interest and issue its approval pursuant to Section 58-27-1300 of S.C. Code Ann. (1976, as amended) and (v) provide such other and further relief as this Commission may deem just and proper.

Respectfully submitted this 14 day of July, 2005.

DUKE ENERGY CORPORATION



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